

GARVEY, TIRELLI & CUSHNER, LTD

Attorneys for the Debtor

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

**DATE: January 5, 2017**

**TIME: 10:00 A.M.**

-----X  
In re:

Franco & Patricia Mariani,

Chapter 13

Case No. 14-11878-jlg

Debtor  
-----X

**NOTICE OF APPLICATION FOR FINAL ALLOWANCE OF COMPENSATION AND  
EXPENSES TO ATTORNEYS FOR DEBTOR UNDER 11 U.S.C. §§ 330 AND 503(a)**

**PLEASE TAKE NOTICE** that upon the attached Application (the "Application") of Todd S. Cushner, Esq., of Garvey, Tirelli & Cushner, Ltd., attorneys for the debtor will move before the Honorable Judge James L. Garrity, United States Bankruptcy Judge for the Southern District of New York at the United States Courthouse, located at the United States Bankruptcy Court, One Bowling Green, New York, NY 10004 on **January 5, 2017 at 10:00 a.m.** the or as soon thereafter as counsel may be heard, for entry of an Order granting movant's Application for Final Allowance of Compensation and Expenses to Attorneys for the Debtor under 11 U.S.C. §§ 330 and 503(a); together with such other and further relief as to this Court may seem just, proper and equitable.

**PLEASE TAKE FURTHER NOTICE** that any response to the Motion must be made and received by counsel for the Debtor with a copy to Chambers on or before seven days prior to the return date of the motion.

Dated: White Plains, New York  
August 29, 2016

GARVEY, TIRELLI & CUSHNER, LTD  
*Attorneys for Debtor*

By: /s/ Todd S. Cushner  
Garvey Tirelli & Cushner, Ltd.  
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**APPLICATION FOR FINAL ALLOWANCE OF COMPENSATION AND EXPENSES  
TO ATTORNEYS FOR DEBTOR UNDER 11 U.S.C. §§ 330 AND 503(a)**

**TO THE HONORABLE JAMES L. GARRITY,  
UNITED STATES BANKRUPTCY COURT, SDNY:**

The application of TODD CUSHNER, of the firm of GARVEY, TIRELLI &  
CUSHNER, LTD., respectfully represents:

**GENERAL BACKGROUND**

1. On June 24, 2014, FRANCO AND PATRICIA MARIANI (the “debtors”), filed a petition with this Court for relief pursuant to Chapter 13 of the Bankruptcy Code.
2. Prior to the filing, the debtors’ were defendants in a foreclosure action brought by Pay Servicing Mortgage pending in the Supreme Court of New York located in Westchester County.
3. The Debtors’ consulted with Attorney Todd Cushner for advise on Chapter 13 bankruptcy and the Debtors’ were presented with a retainer agreement, which was signed after reviewing with the undersigned. Said retainer outlines the fee for the base chapter 13 case as \$5500.00 and details the hourly rate charged for work not included in the base fee. The retainer also describes the court filing fee collected from the Debtors’ in the additional sum of \$281.00.

as set forth below and reflected in the account statement, the Debtors' paid \$3500.00 pre-petition towards the base chapter 13 fees and \$281.00 for the court filing fee leaving a balance of the base fee in the amount of \$2000.00.

4. As this court knows, the proof of claim filed by Fay Servicing in this case was in the amount of \$515,275.99 and lender filed an objection to confirmation based on Debtors' then mortgage arrears.

5. The Debtors' desired participation in the court's Loss Mitigation program and through the undersigned obtained a court order and engaged in the process from February 2015 through March 2016. The undersigned counseled and guided the Debtors' through the courts loss mitigation process, serving papers, providing documents and filing the appropriate motion papers to have the permanent loan modification approved by the court which resulted a reduction in Debtors' mortgage payment and manageable chapter 13 plan payment.

6. Your Applicant expended considerable time and resources in furtherance of this case.

#### **THE ADVERSARY PROCEEDINGS**

7. ON October 2, 2014, Fort Schuyler House thru counsel brought an adversary complaint charging amongst other things an objection to discharge, false pretenses and fraud.

8. This office discussed the matter with clients who wished to proceed with a settlement in lieu of protracted litigation.

9. After considerable time and effort the parties agreed to a settlement amount which would be paid over the life of the chapter 13 plan.

10. The settlement saved the Debtors' a considerable amount of money.

11. The Standing chapter 13 Trustee Jeffrey Sapir expressed no objection to the settlement.

12. Your Honor signed the order approving the settlement agreement on January 5, 2017.

### **FINAL APPLICATION FOR FEES**

13. This application is made by Todd S. Cushner, Esq. of Garvey, Tirelli & Cushner for final allowance of supplemental compensation for professional services rendered to and on behalf of the Debtors' during the period beginning October 2014 and thru January 5, 2017, for reimbursement of actual and necessary costs and expenses incurred in connection with the rendition of such services and for professional services.

14. Your applicant has acted as attorney to the Debtors' and has performed all of the necessary legal services in connection therewith.

15. Todd Cushner, Esq. of Garvey, Tirelli & Cushner regularly maintains records of time expended in the rendition of such services and the costs and expenses incurred. The entries in such records were made in the ordinary course of Garvey, Tirelli & Cushner's business, concurrently with the rendition of such services and in the incurring of such costs and expenses.

A summary of these records and disbursements is annexed hereto as **Exhibit "A"**.

### **SUMMARY OF PROFESSIONAL SERVICES RENDERED**

16. Your applicant has engaged in conferences, email exchanges, phone calls, in person meetings at the client's request, settlement proposals and discussions, in advancement of the goal of obtaining a global resolution that would be beneficial to the Debtors'.

17. For the period of October 2014 through January 5, 2017, your applicant has expended hours above the time extended for services covered under the base fee for chapter 13 filing as follows:

Attorney Todd S. Cushner, Partner  
Non Base Fee Hours: 11.87  
Contracted hourly rate: \$500.00  
**Total: \$5935.00**

Associate James Rufo, Esq.  
Non Base Fee Hours: .50  
Contracted hourly rate: \$350.00  
**Total: \$250.00**

Paralegal, Alenna Merritt and Richard Dougherty  
Non Base Fee Hours: .50  
Contracted hourly rate: \$200.00  
**Total: \$100.00**

**Total Non Base Fees Charges: \$6325.00**

18. Additionally, as set forth in the Debtors' retainer agreement, a copy of which is attached hereto as Exhibit "B", the Debtors' fee for the Base Bankruptcy Case is \$5500.00 of which \$3500.00 was paid pre-petition and a balance remains to be paid in plan of \$2000.00.

19. Additionally, expenses for postage were incurred and are sought in the amount of \$86.90.

20. In total Your Applicant seeks compensation and expenses in the amount of \$8411.90.

21. Your Applicant believes that the supplemental allowance sought herein for services rendered and to be rendered is clearly fair and reasonable, especially given the result and benefit to the Debtors'.

22. Your Applicant's rate of pay has been specifically determined to be fair and reasonable rate for a litigation attorney in the Southern District of New York in prior cases before the Honorable James L. Garrity, and awards for fees based on the same rate of pay in settlement contexts have been approved by other courts in SDNY including the Hon. Judge Robert D. Drain.

#### **I. ATTORNEY TODD CUSHNER:**

23. Attorney Cushner started practicing in the area of consumer bankruptcy law 13 years ago in both the Southern and Eastern Districts of New York. He is additionally admitted in the Federal District of New Jersey. Attorney Cushner presents to the Court that he is committed to assisting consumers and small businesses with Bankruptcy issues. Attorney Cushner regularly provides services to bankruptcy Debtors, on a no fee consult basis. He provided pro bono services to both Chapter 7 and Chapter 13 Debtors' on a regular basis. His policy includes never charging fees for responding to emails or phone calls from or to clients to discuss their case, as seen in Exhibit "C"; the billing statement.

24. Attorney Cushner is active in various professional organizations and associations including National Association of Consumer Bankruptcy Attorney's, The NCLC, The WCBA, the RCBA and the Brooklyn Bar Association. He is a regular attendant at symposiums and conventions including ABI's "Views from the Bench"; NCLC Annual FDCPA Conference; NACBA annual spring convention and annual fall workshops; HVBBA "New Deal Seminar"

Hyde Park, NY; and the Westchester Bar Association's Bankruptcy events in an effort to continue his bankruptcy law and litigation education.

25. It is common knowledge in the bankruptcy community that attorneys representing debtor's in Chapter 13 cases must work in unusual circumstances with no true guarantee of payment. As is the case in Chapter 13 cases, other than a pre-petition retainer, counsel for debtors in Chapter 13 cases are not assured of any further payment. Nevertheless, they continue to work to protect their client's interests, knowing that they may never be paid for all of their time. Accordingly, as is done in Chapter 13 cases, applicant urges the Court to make an award of compensation that involves the adjustment of the lodestar amount to reflect certain factors. In the present case, it is respectfully submitted that the delay in payment, the quality of representation, and the results obtained, should be taken into consideration in computing the award of final compensation.

26. Further consideration should be given to the time value of the money had it been paid contemporaneously with the rendition of services. Your Applicant believes that the allowance sought herein for services rendered and to be rendered is clearly fair and reasonable, particularly in view of the complexity of the case and the issues presented therein.

**WHEREFORE**, your applicant respectfully requests that the Court enter an Order under 11 U.S.C. §§ 330 and 503 allowing final compensation in the aggregate amount of SIX THOUSAND THREE HUNDRED TWENTY-FIVE AND 00/100 (**\$6325.00**) DOLLARS, plus the sum of TWO THOUSAND DOLLARS (\$2000.00) representing the balance the base chapter 13 fee, plus EIGHTY-SIX AND 90/100 (\$86.90) DOLLARS representing reasonable expenses, which will result in a total claim to be paid through the Debtor's Chapter 13 case for the sum on EIGHT THOUSAND FOUR HUNDRED ELEVEN DOLLARS AND 90/100 (\$8411.90) for



professional services rendered and expenses incurred by Todd S. Cushner, Esq. of Garvey, Tirelli & Cushner, Ltd. And granting to your applicant such other and further relief as to this Court may seem just and proper.

Dated: White Plains, New York  
August 29, 2016

GARVEY, TIRELLI & CUSHNER, LTD  
*Attorneys for Debtor*

By: /s/ Todd S. Cushner  
Garvey Tirelli & Cushner, Ltd.  
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SOUTHERN DISTRICT OF NEW YORK

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In re:

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**CERTIFICATION**

1. I, Todd S. Cushner, hereby certify that I am the professional designated by the applicant with the responsibility in this case for compliance with the guidelines for fees and disbursements for professionals in Southern District of New York bankruptcy cases.

2. I have read the application and to the best of my knowledge, information and belief formed after reasonable inquiry, the application complies with the mandatory guidelines.

3. To the best of my knowledge, information and belief formed after reasonable inquiry, the fees and expenses sought and fall within these guidelines.

4. The fees and expenses sought are billed at rates and in accordance with practices customarily employed by the applicant and generally accepted by applicant's clients.

5. A copy of this application has been served upon the Chapter 13 Trustee, Jeffrey L. Sapir, Esq., the U.S. Trustee and the debtors. At the present time, I have no personal knowledge as to whether the Chapter 13 Trustee has approved the application. The debtor has reviewed same and understands that same will be paid through their Chapter 13 Plan.

6. The debtor, the Chapter 13 Trustee, and the U.S. Trustee were served with the application on August 29, 2016.

TO:

Hon. James L. Garrity  
US Bankruptcy Court  
One Bowling Green  
New York, NY 10014

US Department of Justice  
Office of the US Trustee  
201 Varick St. Suite 1006  
New York, NY 10014

Jeffrey Sapir, Esq.  
399 Knollwood Rd. Suite 102  
White Plains, NY 10603

Franco & Patricia Mariani  
3154 Baisley Ave  
Bronx, NY 10465

AND

To all parties identified on the Creditor Mailing Matrix attached hereto as Exhibit A.

By: /s/ Todd S. Cushner  
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